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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/792,014

03/03/2004

Jay S. Walker

03-025

4273

22927

7590

08/30/2007

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EXAMINER

RENDON, CHRISTIAN E

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

08/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/792,014

Applicant(s)

WALKER ET AL.

Examiner

Christian E. Rendón

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/01/04, 04/15/05</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 19 and 21-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The independent claim (19) discloses a method that concludes the end of a poker game by checking if a game parameter is equal to a terminating value. The dependent claims (21-24) further describe the terminating value as the rank or suit of a card, the outcome of a hand or based on at least one card. Under the generally accepted rules of poker and its variants, the outcome of a game resulting in a tie is rare and when it does occur the player with a higher chip count is determined the winner. Therefore it is impossible under the rules of poker to end a game of video poker based on the player receiving an outcome that is equal to value determined by a program.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-6, 10-16 and 19-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Webb (US 6,733,389 B2).**

2. Regarding claim 1-2, Webb discloses a gaming device that uses only symbols as terminating variables (abstract). The game contains a plurality of predetermined symbols that are randomly

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displayed by the symbol generator (abstract) and in one of the preferred embodiment the location of the symbol or marker is determined during the game (col. 2, lines 30-31). Once a player activates the termination trigger the first game will end (col. 3, lines 30-31), therefore the game is programmed to match one of the current values displayed to a termination value to determine the end of a game. Furthermore the outcome of game session: an award (abstract), a bonus game (col. 1, lines 61-65) or termination (col. 3, lines 30-31) is based on the current value.

3. Regarding claim 3-6, the art defines the length of game session as the amount of time it takes the player to activate a termination event (col. 3, lines 30-31). This trigger is determined randomly during game play (col. 2, lines 30-31) therefore a game session is not defined by a period of time, a predetermined number of handle pulls (fig. 1A, 18) or winning outcomes. Furthermore a game session may have a plurality of plays of a game since the length of game time is random.

4. Regarding claim 10, the art discloses a player playing the game at a flat rate by depositing the number of credits will allow the game to start (col. 6, lines 1-3). The primary game of the art contains a game variable that can equal a terminating symbol or variable that is randomly determined during the game (col. 2, lines 30-31) causing the end of a game (col. 3, lines 30-31). Therefore the art inherently incorporates a game variable that corresponds to a probability since the terminating value is determined randomly. Furthermore the limitation of a probability of a player entering a bonus round is also met since that feature is dependent on a random symbol generator (col. 7, lines 35-38).

5. Regarding claims 11-16, the art discloses initiating a gaming session with the pull of the arm (fig. 1A, 18) resulting in the spinning of the reels and the player will be able to spin the reels again as long as there are some remaining credits (col. 7, lines 23-29). A primary game can end in two ways, either a bonus triggering event appears allowing the player to interact with a secondary or bonus game (col. 2, lines 56-59) or a terminating symbol can appears which will end the game without a chance to win further prizes. Therefore the values of the symbols will determine one of the possible

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outcomes of the game. Furthermore, a game session is considered prepaid since the game device accepts coins, bills and credit cards before a game is played; as well as vouchers (col. 5, lines 63-66) which are paper receipt worth a value.

6. Regarding claims 19 and 21-24, even though these claims were evaluated as having enablement issues the examiner will view the term "equal" as "less than" to further examine the novelty of the claims. The art discusses that other embodiments would allow for a game of video poker as the first game and use the symbol generator to display playing cards (col. 10, lines 14-16). Therefore the rules and different variants of poker are inherently incorporated in the reference. Furthermore, a game of poker would view a dealer's hand as the terminating value and if the player's hand is worth "less than" the dealer's hand then that round of game play will end. The hand or outcome of the winner can be determined by the rank of a card (pair of 9's beats a pair of 8's), suit of card (Straight Flush beats a Flush since a Flush has five cards with no matching suit) or at least one card (the difference between a Straight or a bust).

7. Regarding claim 20, a player plays the game at a flat rate by depositing the number of credits will allow the game to start (col. 6, lines 1-3).

**Claims 7-9 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaffe (US 6,551,187 B1).**

8. Jaffe discloses a gaming machine containing pre-determined symbols on slot reels used to represent the primary and secondary game (abstract). The bonus game is triggered when the symbols called "streak" appear on the first reel with the word "Streak" superimposed over any of the symbols on the fifth reel (col. 5, lines 33-36). At this point the reels are stopped, in other words the first game has ended and the "streak" symbol moves from symbol to symbol being chased by the "policeman" symbol or the bonus game-terminating symbol (col. 5, lines 54-56). Each symbol the "streakier" stops at becomes a wild symbol (col. 6, lines 1-2) and the game reevaluates the payline to see if currently it's a winning combination (col. 5, lines 62-67). The game decides when the

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"policeman catches the streakier" by comparing the number of rounds to a predetermined count (col. 6, lines 59-61). Therefore the running count is one of the many factors used to determine the payout. Furthermore the art contains a game parameter corresponding to a number of game elements "streakier" and "the policeman" that are used to determine an outcome or termination of a game.

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian E. Rendón whose telephone number is 571-272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christian E Rendón  
Examiner  
Art Unit 3714

CER

  
ROBERT E. PEZZUTO  
SUPERVISORY PRIMARY EXAMINER